

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 17]

ENDANGERED AND THREATENED WILDLIFE

Proposal To Reclassify the American Alligator

The Director, U.S. Fish and Wildlife Service, hereby issues a notice of proposed rulemaking which would reclassify the American Alligator (*Alligator mississippiensis*) from its present listing as Endangered throughout its entire range, to remove it from endangered or threatened status entirely in Cameron, Vermilion, and Calcasieu parishes in Louisiana; to reclassify it as threatened in Alabama, Florida, Georgia, Louisiana (except Cameron, Vermilion, and Calcasieu parishes), Mississippi, and Texas; and to leave it classified as endangered throughout the remainder of its range. This rulemaking also would authorize limited, lethal removal of dangerous alligators to protect human lives and property; authorize controlled harvest for scientific or conservation purposes in restricted areas; and control the commercial utilization of de-listed alligators through "similarity of appearance" rules, all to enhance long-range conservation objectives for this species as a renewable, natural wildlife resource. A prime management objective will be to attain and maintain optimum sustained populations.

BACKGROUND

In 1967, the U.S. Department of the Interior determined the American alligator to be an endangered species throughout its entire range. This determination expressed concern for alligator populations which had become drastically reduced after many years of excessive exploitation and habitat usurpation by man. Within recent years, however, alligators have increased considerably in some areas, mainly in response to intensive State and Federal protection. In 1972 and 1973, the State of Louisiana was able to allow a limited commercial hunting season on the species.

On December 28, 1973, the new Endangered Species Act (16 U.S.C. 1531-1543, 87 Stat. 884) went into effect. This Act made it a violation of Federal law to take any species listed as endangered, except under permit for scientific purposes or to enhance the propagation or survival of the species. The Act also established a new "threatened" classification, and authorized the Secretary of the Interior to issue such regulations as he deemed necessary and advisable for the conservation of such species.

On March 29, 1974, Governor Edwin Edwards of Louisiana submitted a petition to the Secretary of the Interior requesting that populations of the alligator "in the southwestern coastal marshes (Chenier Plain) in the parishes of Cameron, Vermilion, and Calcasieu of Louisiana, be removed from the Secretary of the Interior's list of threatened and endangered species; that in the south-

central and southeastern coastal Louisiana marshes, the American alligator be classified as a threatened species; and that throughout the remainder of the State, the classification of the American alligator remain unchanged.

This petition, as amplified by other available information, was found by the Director to present substantial information warranting a review of the status of the alligator throughout its range. A notice to that effect was placed in the FEDERAL REGISTER on July 16, 1974 (39 FR 26050). Simultaneously, the Governors of States in which alligators are resident were notified of the review and were requested to supply data relative to the status of the species in their respective States.

This review obtained evidence that the American alligator is making encouraging gains in population over much of its known historical range and that significant losses of populations have occurred only in geographically peripheral and possibly ecologically marginal areas. Population levels in parts of South Carolina, Georgia, Florida, Louisiana, and Texas are high, and, in many areas over these regions are considered to be ecologically secure. Increasing urbanization and development is resulting in increased human-alligator conflicts and control of certain populations is needed to avoid increased public hostility to the species. Even though actual numerical levels of alligators may be below the biotic carrying capacity in most habitats, socioeconomic factors must be considered in setting management goals to maximize public interest in, and acceptance of, coexistence with this potentially troublesome but ecologically important species.

Available data indicates that, in the areas defined above, the primary threats to the alligator populations are not biotic but rather the absence of adequate regulatory and enforcement mechanisms (1) to prevent malicious killing and illicit commercially-oriented killing and (2) to control the illegal commerce in products. Malicious killing stems to a large degree from public hostility and fear, and to a certain extent could be ameliorated through public education. Illegal, commercial killing currently is being held at a tolerable level by rigid enforcement programs. These programs, however, are unrealistic in the face of burgeoning alligator populations and increasing human-alligator conflicts. Reorientation of enforcement efforts toward developing effective methods for controlling the commerce in parts and products of legally taken alligators would permit the realization of acceptable management procedures and a realistic reappraisal of the population status of the alligator. The populations defined above now are at the point whereby the species probably would be best served by returning it to more flexible management programs aimed at the attaining and maintaining optimum sustained populations.

DESCRIPTION OF THE PROPOSAL

As a result of this review, the Director finds that there are sufficient data to

warrant a proposed rulemaking that (1) the alligator is neither endangered nor threatened in Cameron, Vermilion, and Calcasieu parishes, Louisiana; (2) the alligator is a threatened species in Alabama, Georgia, Louisiana (except Cameron, Vermilion, and Calcasieu parishes), Mississippi, and Texas; and the alligator is an endangered species in all other parts of its range.

Generally, the proposed regulations vary according to the need of the alligator populations involved. These regulations would allow Federal officers, State officers or persons authorized by the State wildlife agency to take dangerous alligators in areas where the species is listed as threatened, and would permit the State to place hides or other parts of animals so taken into commercial trade through controlled channels. In areas where the alligator is neither endangered nor threatened, the species is no longer under Federal control, and alligators could be taken in accordance with State law. The marketing of alligator products from a legal, State-controlled hunt, would be strictly controlled under a Federal licensing and marketing system, which is accomplished by matching the regulatory program of the State of Louisiana with Federal rules governing interstate commerce in unlisted alligators under the "similarity of appearance" provision in section 4(e) of the Act. The control of commerce in products from the "similar," but not endangered or threatened, alligators will insure that this legal market does not become a "screen" for commerce in alligator products derived from poaching on endangered or threatened alligators. The import and export of alligators or alligator products would be prohibited. Although the alligator would be removed from the endangered list in much of its range, it actually would have more Federal protection than it had prior to December 28, 1973, when the Endangered Species Act became effective.

More specifically, the proposal would amend all of the existing subparts of Part 17, changing the structure of Part 17 radically in some places. The rules re-listing the alligator, providing for its conservation where it is threatened, and protecting endangered and threatened populations by controlling commerce in "similar" alligators, are woven throughout the restructured Part 17.

Subpart A (Introduction and General Provisions) would be amended by adding a series of definitions necessary for the proper implementation of the Act. Of note are the definitions of "harass" and "industry and trade." These definitions are intended to clarify the scope of the prohibition on taking, and on interstate commerce. The amended Subpart A would also provide rules to implement the two major exemptions in the Act—Alaskan natives and wildlife held prior to the Act. Subpart A would also establish criteria for two new and very important aspects of the conservation of endangered and threatened wildlife—the rules on similarity of appearance and the rules on captive, self-sustaining populations.

The rules on similarity of appearance, which are central to this alligator proposal, arise from section 4(e) of the Act. That section provides, essentially, that wildlife which is neither endangered nor threatened can be treated if it were classified in one of these two categories, to the extent deemed necessary, in order to prevent further danger to such wildlife due to the inability of law enforcement personnel to distinguish between them. Section 17.7, as proposed, lists the criteria for deciding that a given species is similar to a listed species. Rules to determine the extent to which the similar species will be treated as endangered or threatened are in Subpart E.

Section 17.8 contains a proposal which would allow the Director to determine that a given captive population of otherwise endangered species constitutes, in fact, a separate, self-sustaining population which warrants treatment as threatened wildlife. Thus, for example, if a given species was very rare in the wild, but had been successfully bred in captivity in the United States, it might qualify as a separate "species" within the meaning of the Act. If this "species" was sufficiently self-sustaining so that its continuance would not be a significant drain on wild populations, then it could be treated as if it was a threatened species. This would mean that it would be subject to the more liberal permit regulations under Subpart D (Threatened Wildlife), or might even be the subject of a special rule in that subpart. This would enhance captive breeding efforts as well as allow legitimate uses of such wildlife, by loosening some of the restrictions on interstate movement of the individual animals.

Subpart B would be amended to establish a clear distinction between the lists of endangered wildlife established under the former Act—the Endangered Species Conservation Act of 1969—and the present Act. While all species listed under both Acts are fully protected by the present Act and regulations, it was Congress' intent that all the species on the list from the 1969 Act be reevaluated under the present Act. The alligator will be the first such reevaluation. Under the proposal, as species are reevaluated, they will be moved from the "old" lists in §§ 17.11 and 17.12, and re-established as appropriate on the "new" list in § 17.13. This "new" list has a revised format intended to consolidate all the pertinent information on the species in question. In addition, "similar" species and captive, self-sustained populations will be indicated on the "new" list. Also, the list will be footnoted to indicate species under the jurisdiction of the Department of Commerce. Eventually, this new listing format will enable any person to find out what treatment, if any, is given to the wildlife in which he is interested, simply by scanning the list.

Subpart C (Endangered Wildlife), as proposed, is virtually identical in outline to the proposed rulemaking already published on May 20, 1975 (See 40 FR 21977). The sections on permits (§§ 17.22

and 17.23) are in fact identical. However, § 17.21, which describes the prohibitions, has been expanded to clarify some of the prohibitions. It also provides certain exemptions, based on the authority provided in the Act, for acts which would otherwise be prohibited—such as the "taking," by capture of an injured animal, of an endangered animal in an emergency to save the animal's life.

Subpart D (Threatened Wildlife) would be amended by completely replacing the existing Subpart D which contains 3 species of kangaroos presently. The new Subpart D would establish a set of blanket prohibitions for threatened wildlife. These are the same prohibitions that the Act provides for endangered wildlife. Thus, unless another rule is provided specifically in this subpart, a threatened species will be protected as if it was endangered. The new Subpart D would then provide for permits for any threatened wildlife. These permits would be more liberal than permits available under Subpart C (See proposed §§ 17.22 and 17.23) for endangered wildlife, in that they would be available for more purposes, and the strict procedural rules for endangered wildlife permits would not apply.

The major change in the proposed Subpart D is the establishment of series of sections for special rules on each group of wildlife. Thus, as with alligators, the prohibitions and permits provisions of §§ 17.31 and 17.32 apply, except as otherwise provided in the special rules in § 17.35(a).

The proposal would establish a new Subpart E on Similarity of Appearance. As explained above, if the Director determined, pursuant to the Act and to § 17.7 of this proposal, that a given species, such as alligators in Cameron, Vermilion, and Calcasieu parishes in Louisiana, is so similar to a listed species as to cause further threats to the listed species, the rules in this subpart would provide the extent to which the similar species would be treated as endangered or threatened. Basically, there are three types of treatment proposed. First, the similar species could be treated (under § 17.51) as if it was endangered or threatened. In that case, all the rules for endangered or threatened species would apply equally to the similar species. If the situation was such, however, that a given specimen could be distinguished from the endangered or threatened species by documentation of its origin, for instance, the Service could provide that § 17.52 would apply. In that case, a permit could be obtained for transactions with the similar species. Third, as in the case of alligators, a special rule might be provided in lieu of a permit procedure, in order to distinguish the similar species from the endangered or threatened species.

ALLIGATORS AND THE SIMILARITY OF APPEARANCE PROVISION

In connection with this proposal, the Director has made several findings in re-

gard to alligators. First, he has found that in accordance with section 4(e) of the Act, alligators from Cameron, Vermilion, and Calcasieu parishes in Louisiana, which it is proposed are neither endangered nor threatened, are similar in appearance to alligators which are endangered or threatened. In fact, the only time when such alligators can be distinguished from other alligators is when they are in the wild in the three named parishes. Since alligator poaching, and the subsequent trading in alligator hides and products, is a major factor in the threat to endangered and threatened alligators, the Director has found it necessary to propose these rules to control the interstate trade in alligator hides and products, and to prohibit the import and export trade.

The Director has also reviewed the laws and proposed regulations and programs for the conservation of the alligator in the three parishes to be de-listed. These laws, regulations and programs provide for a controlled hunt by licensed hunters, and for an elaborate system of hunter verification and shipping tags. This system of controls, besides being proper for the utilization and conservation of the alligator as a renewable resource, provide a means of distinguishing alligators legally taken in the area where they are neither endangered nor threatened, from alligators which are endangered or threatened. Based on this State system, the proposed rules in Subpart E (Similarity of Appearance) provide a method for continuing this distinction in interstate commerce. They provide for the Federal licensing of buyers, tanners, and fabricators of alligator hides. Each licensee would have to keep special records based on the State tags, and would be subject to inspection. In addition, every fabricated product would bear a special Federal mark, denoting that it was made from the hides of legally taken alligators which were neither endangered nor threatened. This would allow enforcement personnel to distinguish these alligator hides and products from endangered or threatened alligator hides and products, at every stage of processing and interstate marketing.

FUTURE AMENDMENTS

If this proposal is adopted, the proposals which are now outstanding, such as those on the grizzly bear, three species of western trout, and others, will be amended, after adoption, to fit into this framework. Also, the existing regulations dealing with kangaroos will be reformed, in structure only, in the final rulemaking on this proposal. Further regulations for the licensing of all importers and exporters of wildlife, under section 9(d) of the Act, for the establishment of export controls under section 9, for new forfeiture procedures under section 11, and for "similarity of appearance" treatment for other species, will be forthcoming. In addition, the Service will continue its active review of the status of many species. Proposals to list, to reclassify, or to de-list various species will also be forthcoming.

PUBLIC COMMENTS SOLICITED

The Director intends the final rulemaking to provide for the most effective conservation of the alligator. He therefore desires to obtain the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposed rules.

The final rulemaking and promulgation of alligator regulations will take into consideration the comments received by the Director. Such comments and any additional information received may lead the Director to adopt final regulations that differ from this proposal. The Fish and Wildlife Service has under preparation an environmental assessment concerning this matter.

SUBMITTAL OF WRITTEN COMMENTS

Interested persons may participate in this rulemaking by submitting written comments to the Director (FWS/LE), U.S. Fish and Wildlife Service, P.O. Box 19183, Washington, D.C. 20036. All relevant comments received no later than September 8, 1975, will be considered. The Service will attempt to acknowledge receipt of comments, but substantive responses to individual comments may not be provided. Comments received will be available for public inspection during normal business hours at the Service's office in Suite 600, 1612 K Street NW., Washington, D.C.

This notice of proposed rulemaking is issued under the authority of the Endangered Species Act of 1973 (16 U.S.C. 1531-1543).

Dated: June 27, 1975.

HARVEY K. NELSON,
Acting Director,
Fish and Wildlife Service.

Accordingly, it is hereby proposed to amend Part 17, Title 50 CFR as follows:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

1. Retitle Part 17 of Subchapter B of CFR Chapter I to read as set forth above.

2. Amend the table of sections to read:

Subpart A—Introduction and General Provisions	
Sec.	
17.1	Purpose of regulations.
17.2	Scope of regulations.
17.3	Definitions.
17.4	Pre-Act wildlife.
17.5	Alaska natives.
17.6	State cooperative agreements [Reserved].
17.7	Similarity of appearance.
17.8	Captive, self-sustaining populations.
Subpart B—Lists	
17.11	Endangered foreign wildlife—1969 Act.
17.12	Endangered native wildlife—1969 Act.
17.13	Endangered and threatened wildlife—1973 Act.
17.14	Endangered and threatened plants—1973 Act [Reserved].
17.15	Amendments to the lists.
Subpart C—Endangered Wildlife	
17.21	Prohibitions.
17.22	Permits for scientific purposes, or for the enhancement of propagation or survival.
17.23	Economic hardship permits.

Subpart D—Threatened Wildlife

Sec.	
17.31	Prohibitions.
17.32	Permits.
17.33	Special rules—mammals [Reserved].
17.34	Special rules—birds [Reserved].
17.35	Special rules—reptiles.
17.36	Special rules—amphibians [Reserved].
17.37	Special rules—fishes [Reserved].
17.38	Special rules—mollusks [Reserved].
17.39	Special rules—crustaceans [Reserved].
17.40	Special rules—insects [Reserved].
17.41	Special rules—other forms [Reserved].

Subpart E—Similarity of Appearance

17.50	General.
17.51	Treatment as endangered or threatened.
17.52	Permits.
17.53	Special rules—general.
17.54	American alligator.

AUTHORITY: Endangered Species Act of 1973 (16 U.S.C. 1531-1543).

Subpart A—Introduction and General Provisions

3. Amend § 17.1 by deleting the present language and replacing it with the following:

§ 17.1 Purpose of regulations.

(a) The regulations in this part implement the Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531-43.

(b) The regulations identify those species of wildlife and plants determined by the Director to be endangered or threatened with extinction under section 4(a) of the Act and also, in §§ 17.11 and 17.12, carry over the species and subspecies of wildlife designated as endangered under the Endangered Species Conservation Act of 1969, 83 Stat. 275, 16 U.S.C. 668cc-1 to 6, which are deemed endangered species under section 4(c) (3) of the Act.

(c) The regulations in this part provide general and special protective regulations for threatened species of wildlife.

4. Amend § 17.2 to read as follows:

§ 17.2 Scope of regulations.

(a) The regulations of this part apply only to endangered and threatened wildlife and plants.

(b) By agreement between the Service and the National Marine Fisheries Service, the jurisdiction of the Department of Commerce has been specifically defined to include certain species, while jurisdiction is shared in regard to certain other species. Such species are footnoted in Subpart B of this part, and reference is given to special rules of the National Marine Fisheries Service for those species.

(c) The provisions in this part are in addition to, and are not in lieu of, other regulations of this Subchapter B which may require a permit or prescribe additional restrictions or conditions for the importation, exportation, and interstate transportation of wildlife.

(d) The examples used in this part are provided solely for the convenience of the public, and for the purpose of explaining the intent and meaning of the regulation to which they refer. They have no legal significance.

5. Add the following new §§ 17.3, 17.4, 17.5, 17.6, 17.7, and 17.8 to Subpart A, reading as follows:

§ 17.3 Definitions.

In addition to the definitions contained in Part 10 of this subchapter, and unless the context otherwise requires, in this Part 17:

"Act" means the Endangered Species Act of 1973 (16 U.S.C. 1531-1543; 87 Stat. 884);

"Alaskan Native" means a person defined in the Alaska Native Claims Settlement Act [43 U.S.C. section 1603(b) (85 Stat. 588)] as a citizen of the United States who is of one-fourth degree or more Alaska Indian (including Tsimshian Indians enrolled or not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or combination thereof. The term includes any Native, as so defined, either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or town of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any Native village or Native town. Any citizen enrolled by the Secretary pursuant to section 5 of the Alaska Native Claims Settlement Act shall be conclusively presumed to be an Alaskan Native for purposes of this part;

"Authentic native articles of handicrafts and clothing" means items made by an Indian, Aleut, or Eskimo which (a) were commonly produced on or before December 21, 1972, and (b) are composed wholly or in some significant respect of natural materials, and (c) are significantly altered from their natural form and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or similar mass copying devices. Improved methods of production utilizing modern implements such as sewing machines or modern techniques at a tannery registered pursuant to § 18.23(c) of this subchapter (in the case of marine mammals) may be used so long as no large scale mass production industry results. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting. The formation of traditional native groups such as cooperatives, is permitted so long as no large scale mass production results;

"Harass" in the definition of "take" in the Act means an act which either actually or potentially harms wildlife by killing or injuring it, or by annoying it to such an extent as to cause serious disruption in essential behavior patterns, such as feeding, breeding or sheltering; significant environmental modification or degradation which has such effects is included within the meaning of "harass;"

"Industry or trade" in the definition of "commercial activity" in the Act means

the actual or intended transfer of wildlife or plants from one person to another person in the pursuit of gain or profit;

"Native village or town" means any community, association, tribe, clan or group;

"Specimen" means any animal or plant, or any part, product, egg, seed or root of any animal or plant;

"Subsistence" means the use of endangered or threatened wildlife for food, clothing, shelter, heating, transportation and other uses necessary to maintain the life of the taker of the wildlife, or those who depend upon the taker to provide them with such subsistence, and includes selling any edible portions of such wildlife in native villages and towns in Alaska for native consumption within native villages and towns;

"Wasteful manner" means any taking or method of taking which is likely to result in the killing or injury of endangered or threatened wildlife beyond those needed for subsistence purposes, or which results in the waste of a substantial portion of the wildlife, and includes without limitation the employment of a method of taking which is not likely to assure the capture or killing of the wildlife, or which is not immediately followed by a reasonable effort to retrieve the wildlife.

§ 17.4 Pre-Act wildlife.

(a) The prohibitions defined in Subparts C and D of this Part 17 shall not apply to any activity involving endangered or threatened wildlife which was held in captivity or in a controlled environment on December 28, 1973: *Provided,*

(1) That the purposes of such holding were not contrary to the purposes of the Act; and

(2) That the wildlife was not held in the course of a commercial activity.

Example 1. On January 25, 1974, a tourist buys a stuffed hawksbill turtle (an endangered species) in a foreign country. On December 28, 1973, the stuffed turtle had been on display for sale. The tourist imports the stuffed turtle into the United States on January 26, 1974. This is a violation of the Act since the stuffed turtle was held for commercial purposes on December 28, 1973.

Example 2. On December 27, 1973 (or earlier), a tourist buys a leopard skin coat for his wife in a foreign country. On January 5, he imports it into the United States. He has not committed a violation since on December 28, 1973, he was the owner of the coat, for personal purposes, and the chain of commerce had ended with the sale on the 27th. Even if he did not finish paying for the coat for another year, as long as he had possession of it, and he was not going to resell it, but was using it for personal purposes, the Act does not apply to that coat.

Example 3. On or before December 28, 1973, a hunter kills a leopard legally in Africa. He has the leopard mounted and imports it into the United States in March 1974. The importation is not subject to the law. The hunter was not engaged in a commercial activity, even though he bought the services of a guide, outfitters, and a taxidermist to help him take, preserve, and import the leopard. This applies even if the trophy was in the possession of the taxidermist on December 28, 1973.

Example 4. On January 15, 1974, a hunter kills a leopard legally in Africa. He has the

leopard mounted and imports it into the United States in June 1974. This importation is a violation of the Act since the leopard was not in captivity or a controlled environment on December 28, 1973, and the leopard is listed as endangered in § 17.11 in June 1974.

(b) There shall be a rebuttable presumption that any wildlife involved in a prohibited act was not held in captivity or in a controlled environment on December 28, 1974, and therefore is not exempt from the prohibitions defined in Subparts C and D of this Part 17.

(c) Service officers or Customs officers may refuse to clear endangered or threatened wildlife for importation into or exportation from the United States, pursuant to § 14.53 of this subchapter, until the importer or exporter can demonstrate that the exemption referred to in this section applies. Exempt status may be established by any sufficient evidence, including an affidavit containing the following:

- (1) The affiant's name and address;
- (2) Identification of the affiant;
- (3) Identification of the endangered or threatened wildlife which is the subject of the affidavit;
- (4) A statement by the affiant that to the best of his knowledge and belief, the endangered or threatened wildlife which is the subject of the affidavit was in captivity or in a controlled environment on December 28, 1973, and was not being held for purposes contrary to the Act or in the course of a commercial activity;
- (5) A statement by the affiant in the following language:

The foregoing is principally based on the attached exhibits which, to the best of my knowledge and belief, are complete, true and correct. I understand that this affidavit is being submitted for the purpose of inducing the Federal Government to recognize an exempt status regarding (*insert description of wildlife*), under the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), and regulations promulgated thereunder, and that any false statements may subject me to the criminal penalties of 18 U.S.C. 1001.

(6) As an attachment, records or other available evidence to show:

(i) That the wildlife in question was being held in captivity or in a controlled environment on December 28, 1973;

(ii) The purpose for which the wildlife was being held; and

(iii) The nature of such holding, that is to establish that no commercial activity was involved.

(d) This section applies only to wildlife born on or prior to December 28, 1973. It does not apply to the progeny of any such wildlife born after December 28, 1973.

§ 17.5 Alaska natives.

(a) The provisions of Subpart C of this part relating to the importation or the taking of endangered wildlife, and any provision of Subpart D of this part relating to the importation or the taking of threatened wildlife, shall not apply to:

(1) Any Indian, Aleut, or Eskimo who is an Alaskan native and who resides in Alaska; or

(2) Any non-native permanent resident of an Alaskan native village;

if the taking is primarily for subsistence purposes, and is not accomplished in a wasteful manner.

(b) Edible portions of endangered or threatened wildlife taken or imported pursuant to paragraph (a) of this section may be sold in native villages or towns in Alaska for native consumption within native villages and towns in Alaska.

(c) Non-edible by-products of endangered or threatened wildlife taken or imported pursuant to paragraph (a) of this section may be sold in interstate commerce when made into authentic native articles of handicrafts and clothing.

§ 17.6 State cooperative agreements. [Reserved]

§ 17.7 Similarity of appearance.

(a) Whenever the Director determines that wildlife which is not endangered or threatened closely resembles endangered or threatened wildlife, such wildlife shall be treated as either endangered or threatened, pursuant to section 4(e) of the Act. Such wildlife shall appear in the list in § 17.13, with the notation "S/A" in the "current status" column, followed by either a letter "E" or a letter "T" in parentheses, to indicate whether the wildlife is being treated as endangered or threatened. The extent to which the wildlife is treated as endangered or threatened, including any exceptions to such treatment, is determined by the provisions in Subpart E of this Part 17.

(b) The determination that wildlife is to be treated as endangered or threatened due to similarity of appearance shall be made by regulation.

(c) In determining whether to treat wildlife as endangered or threatened due to similarity of appearance, the Director shall consider the following factors:

(1) The degree of difficulty which law enforcement personnel would have in distinguishing the wildlife in question from endangered or threatened wildlife, especially where: (i) The distinction between the endangered wildlife and other wildlife is based upon geographical boundaries; (ii) the normal morphological or other differentiating characteristics of the wildlife is minute, or can be easily masked, or would not be apparent when products are processed;

(2) The additional threat posed to the endangered or threatened wildlife by the loss of control occasioned because of the similarity of appearance;

(3) The amount of control over transactions involving endangered or threatened wildlife to be gained either by: (i) Imposing the same prohibitions on the wildlife which is similar as applies to the endangered or threatened wildlife, or (ii) providing where the wildlife is treated as threatened, special rules in Subpart D of this part to distinguish the similar wildlife from the endangered or threatened wildlife.

Example 1. The ABC sparrow is endangered wildlife. The ABD sparrow is a subspecies that

is so similar to the ABC sparrow that when found outside their normal habitat, the two cannot readily be distinguished by law enforcement personnel. The ABD sparrow is

listed in § 17.13, after following the proper procedures as follows:
§ 17.13(h)

Species			Current status	Portion of range where endangered or threatened	When listed	Special rules
Common name	Scientific name	Geographic boundaries				
ABC sparrow	<i>ABCus</i>	North America	E	Entire	Apr. 6, 1976	N/A
ABD sparrow	<i>ABDus</i>	Wherever found	S/A(E)	N/A	do.	N/A

Example 2. Suppose the ABC sparrow is listed as endangered in only a portion of its range. Within the meaning of the Act, the ABC sparrow as defined by geographic boundaries is a "species." The ABC sparrow

which occurs beyond those boundaries is a different "species", even though it is identical, except in location, to the listed "species." If the criteria of this section were met, the two "species" could be listed as follows:
§ 17.13(h)

Species			Current status	Portion of range where endangered or threatened	When listed	Special rules
Common name	Scientific name	Geographic boundaries				
ABC sparrow	<i>ABCus</i>	Idaho	E	Entire	July 4, 1976	N/A
Do.	do.	Wherever found outside of Idaho.	S/A(E)	N/A	do.	§ 17.52

§ 17.8 Captive, self-sustaining populations.

(a) Whenever the Director determines that a captive, self-sustaining population of otherwise endangered wildlife exists within the United States, such population may be treated as threatened wildlife and may be listed in § 17.13. Each such listing shall bear the notation "(C/P)" following the designation of status, to indicate that the reason for treating it as threatened rather than endangered wildlife was the attainment of a captive, self-sustaining population within the United States.

(b) The listing of species as threatened because they are captive, self-sustaining populations within the United States shall follow the same procedures as required in section 4(f) of the Act for the listing of endangered or threatened species, except that captive wildlife shall not be considered to be "resident" wildlife within the meaning of section 4(b) (1) of the Act.

(c) In determining whether to list a species as threatened because it is a captive, self-sustaining population, the Director shall consider the following factors:

- (1) The approximate number of specimens of that species that exist in captivity in the United States;
- (2) The age and sex ratios of such captive specimens;

(3) The number of persons who have successfully propagated the species in captivity;

(4) The number of generations of the species that have been successfully propagated in captivity;

(5) The likelihood that persons owning or controlling such captive specimens will cooperate in insuring the continued existence of and reproduction among such captive specimens;

(6) The number of requests to take or import wild specimens of the same species received during the 24 months immediately prior to the date consideration of the subject species was undertaken;

(7) The ratio of wild born versus captive born specimens of the subject species in captivity in the United States; and

(8) Such other factors as he deems appropriate.

(d) Permits shall be available pursuant to § 17.32, for persons who wish to engage in otherwise prohibited activities with specimens of wildlife listed as threatened under this section.

Example. Although the XY pheasant is listed as endangered wildlife, the Director determines that there exists in the United States a captive, self-sustaining population of the pheasant which constitutes no drain on the wildlife population. After following the proper procedures, the pheasant would be listed as follows:

Species			Current status	Portion of range where endangered or threatened	When listed	Special rules
Common name	Scientific name	Geographic boundaries				
XY pheasant	<i>Gigantus smallus</i>	Southeast Asia	E	Entire	Dec. 31, 1972	N/A
Do.	do.	United States	C/P(T)	N/A	do.	§ 17.34

Subpart B—Lists

6. Add the following new paragraph (a) to § 17.11, reading as follows, and reletter and amend the existing portion as paragraphs (b) and (c):

§ 17.11 Endangered foreign wildlife—1969 Act.

(a) The species listed in this section were listed as endangered pursuant to the Endangered Species Conservation

Act of 1969. Under section 4(c) (3) of the Act, they are deemed to be endangered species within the meaning of the Act. Therefore, all the provisions of this Part 17 which apply to endangered species apply to the species listed in this section. As the process of republication to conform with the classifications of the Act goes on, species will be deleted from this section and will be added, as appropriate to the list in § 17.13.

7. Add the following new paragraph (a) to § 17.12, reading as follows, and reletter and amend the existing portion as paragraphs (b) and (c):

§ 17.12 Endangered native wildlife—1969 Act.

(a) The species listed in this section were listed as endangered pursuant to the Endangered Species Conservation Act of 1969. Under section 4(c) (3) of the Act, they are deemed to be endangered species within the meaning of the Act. Therefore, all the provisions of this Part 17 which apply to endangered species apply to the species listed in this section. As the process of republication to conform with the classifications of the Act goes on, species will be deleted from this section and will be added, as appropriate to the list in § 17.13.

8. Delete the entry on the list in § 17.12 reading "Alligator, American; *Alligator mississippiensis*." The new entry will be found in § 17.13.

9. Add the following new §§ 17.13 and 17.14 to Subpart B, reading as follows:

§ 17.13 Endangered and threatened wildlife—1973 Act.

(a) The list in this section contains all the wildlife which is determined to be endangered or threatened by the Director or by the Secretary of Commerce. It also contains wildlife treated as endangered or threatened because it is similar in appearance to an endangered or threatened species (see § 17.7) or because it constitutes a captive, self-sustaining population (see § 17.8).

(b) The columns entitled "Common name", "Scientific name" and "Geographic boundaries (Range)" define the species of wildlife within the meaning of the Act. Thus, two different geographic populations of the same subspecies or species will be identified by their differing geographic boundaries, even though the common and scientific names are identical for both entries. Since the geographic boundaries are part of the description of the species, the prohibitions in the Act and in this Part 17 apply only to the species in the wild as defined by its geographic boundaries. Captive specimens of the species will be treated as appropriate under the similarity of appearance rule in § 17.7. Although common names are included, they cannot be relied upon for identification of any specimen, since they vary greatly in local usage.

(c) The "current status" column shows whether the species is considered

endangered (E) or threatened (T). A key is also provided to indicate that a species is to be treated as endangered or threatened due to similarity of appearance (S/A) or a species which is considered threatened because it is a captive, self-sustaining population (C/P).

(d) The column entitled "Portion of the range where endangered or threatened" designates that proportion of the range of species over which it is endangered or threatened. The Act requires that the species must be endangered or threatened over all or a significant portion of its range in order to be listed.

(e) For information purposes only, the "When listed" column provides a citation to the date and location of the FEDERAL REGISTER publication actually listing the species. That publication will include a statement indicating the basis for the current status.

(f) The "special rules" column is a reference to any special rules in this Part

17 relating to the wildlife. There may be other rules in this Subchapter B (Parts 10-22) that also relate to such wildlife, such as port-of-entry requirements, etc. It is not intended that the references in the "Special rules" column list all the regulations of the Service which might apply to the wildlife in question, or the regulations of other Federal, State or local agencies.

(g) (1) The listing of a particular taxonomic group includes all lower taxonomic groups. Example: If the genus *Felis* was listed, all species, subspecies, races, and populations of that genus are considered to be listed. If the species *Felis concolor* was listed, all subspecies, races, and populations of that species are considered to be listed.

(2) The letters "N/A" appearing in any column means "not applicable."

suant to § 17.22 or § 17.23, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit or to cause to be committed, any of the acts described in paragraphs (b) through (f) of this section in regard to any endangered wildlife.

(b) *Import or export.* It is unlawful to import or to export any endangered wildlife. Any shipment in transit through the United States is an importation and an exportation, whether or not it has entered the country for customs purposes.

(c) *Take.* (1) It is unlawful to take endangered wildlife within the United States, within the territorial sea of the United States, or upon the high seas. The high seas shall be all waters seaward of the territorial sea of the United States, except waters officially recognized by the United States as the territorial sea of another country, under international law.

(2) Notwithstanding paragraph (c) (1) of this section, any officer or employee of the Federal, State or local government may take any emergency action to protect human life or to aid an injured or sick endangered or threatened specimen, or to dispose of the dead body of an endangered or threatened specimen.

(d) *Possession and other acts with unlawfully taken wildlife.* It is unlawful to possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any endangered wildlife which was taken in violation of paragraph (c) of this section.

Example. A person captures a whooping crane in Texas and gives it to a second person, who puts it in a closed van and drives thirty miles, to another location in Texas. The second person then gives the whooping crane to a third person, who is apprehended with the bird in his possession. All three have violated the law—the first by illegally taking the whooping crane; the second by transporting an illegally taken whooping crane; and the third by possessing an illegally taken whooping crane.

(e) *Interstate or foreign commerce.* It is unlawful to deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever, and in the course of a commercial activity, any endangered wildlife.

(f) *Sale or offer for sale.* (1) It is unlawful to sell or to offer for sale in interstate or foreign commerce any endangered wildlife.

(2) An advertisement for the sale of endangered wildlife which carries a warning to the effect that no sale may be consummated until a permit has been obtained from the U.S. Fish and Wildlife Service shall not be considered an offer for sale within the meaning of this subsection.

§ 17.22 Permits for scientific purposes or for the enhancement of propagation or survival.

Upon receipt of a complete application, the Director may issue a permit authorizing any activity otherwise prohibited by § 17.21, in accordance with the issuance criteria of this section, for scientific research or for enhancing the

Species		Geographic boundaries (range)	Current status	Portion of range where endangered or threatened	When listed	Special rules
Common name	Scientific name					
American alligator.	<i>Alligator mississippiensis.</i>	Entire United States outside of Alabama, Florida, Georgia, Louisiana, Mississippi, South Carolina, Texas.	E	Entire.....		N/A
Do.....	do.....	States of Alabama, Florida, Georgia, Louisiana (except Cameron, Vermilion, and Calcasieu parishes), Mississippi, South Carolina, Texas.	T	do.....		§ 17.36(a)
Do.....	do.....	Cameron, Vermilion, and Calcasieu Parishes in Louisiana.	S/A(T)	NA.....		§ 17.53(a)
Do.....	do.....	All captive.....	S/A(T)	NA.....		N/A

§ 17.14 Endangered and threatened plants—1973 Act. [Reserved]

§ 17.15 Amendments to the lists.

(a) The lists in §§ 17.13 and 17.14 may be revised from time to time, in accordance with the procedures specified in the Act, as additional data become available which show, to the Director's satisfaction, that a species should be added to or removed from the list, or changed in status. The Director may also delete species from §§ 17.11 and 17.12 and, if appropriate, re-establish them in § 17.13 in the proper classification following the procedures specified in the Act.

(b) At any time, any interested person may petition the Director to review the status of any species, with a view to taking one of the actions described in paragraph (a) of this section. Such petitions must be dated and in writing, and must be submitted to the Director (FWS/SE). The petition must contain the following information:

- (1) Name and address of the person making the request;
- (2) Association, organization, or business, if any, represented by the person making the request;
- (3) Reasons why the person making the request, or the person he represents,

should be considered to be an "Interested person";

(4) Designation of the particular species in question by common and scientific names;

(5) Narrative explanation of the request for review and justification for a change in the status of the species in question.

(6) Scientific, commercial, or other data believed to support the request; and

(7) Signature of the person making the request.

If it is determined that substantial evidence has been presented which warrants a review, a finding to that effect shall be published in the FEDERAL REGISTER. Such notice shall give all interested persons an opportunity to comment and to submit additional data and information.

10. Change the title of Subpart C to "Endangered Wildlife," delete present § 17.21 and replace with the following new § 17.21 and amend §§ 17.22 and 17.23 to read as follows:

Subpart C—Endangered Wildlife

§ 17.21 Prohibitions.

(a) Except as provided in Subpart A of this part, or under permits issued pur-

propagation or survival of endangered wildlife.

(a) *Application requirements.* Applications for permits under this section must be submitted to the Director by the person who wishes to engage in the activity prohibited by § 17.21. Each application must contain the general information and certification required by § 13.12(a) of this subchapter, plus all of the following information:

(1) The common and scientific names of the species sought to be covered by the permit, as well as the number, age, and sex of such species, and the activity sought to be authorized (such as taking, exporting, selling in interstate commerce, etc.);

(2) A statement as to whether, at the time of application, the wildlife sought to be covered by the permit (i) is still in the wild, (ii) has already been removed from the wild, or (iii) was born in captivity;

(3) A resume of the applicant's attempts to obtain the wildlife sought to be covered by the permit in a manner which would not cause the death or removal from the wild of such wildlife;

(4) If the wildlife sought to be covered by the permit has already been removed from the wild, the country and place where such removal occurred; if the wildlife sought to be covered by the permit was raised in captivity, the country and place where such wildlife was born;

(5) A complete description and address of the institution or other facility where the wildlife sought to be covered by the permit will be used, displayed, or maintained;

(6) If the applicant seeks to have live wildlife covered by the permit,

(i) A complete description, including photographs or diagrams, of the area and facilities where such wildlife will be housed and cared for;

(ii) A brief resume of the technical expertise of the persons who will care for such wildlife including any experience the applicant or his personnel have had in raising, caring for, and propagating similar wildlife, or any closely related wildlife;

(iii) A statement of the applicant's willingness to participate in a cooperative breeding program, and to maintain or contribute data to a studbook;

(iv) A detailed description of the type, size and construction of all containers into which such wildlife will be placed during transportation or temporary storage, if any, and of the arrangements for feeding, watering and otherwise caring for such wildlife during that period; and

(v) For the 5 years preceding the date of this application provide a detailed description of all mortalities involving the species covered in the application (or any other wildlife of the same genus or family held by the applicant), including the causes of such mortalities and the steps taken to avoid or decrease such mortalities.

(7) Copies of the contracts and agreements pursuant to which the activities sought to be authorized by the permit will be carried out; such copies must

identify all persons who will engage in the activities sought to be authorized, and must also give the dates for such activities; and

(8) A full statement of the reasons why the applicant is justified in obtaining the permit, including:

(i) The details of the activities sought to be authorized by the permit;

(ii) The details of how such activities will be carried out;

(iii) The relationship of such activities to scientific objectives or to objectives enhancing the propagation or survival of the wildlife sought to be covered by the permit; and

(iv) The planned disposition of such wildlife upon termination of the activities sought to be authorized.

(b) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (a) of this section, the Director will decide whether or not a permit should be issued. In making his decision, the Director shall consider, in addition to the general criteria in § 13.21 (b) of this subchapter, the following factors:

(1) Whether the purpose for which the permit is required is adequate to justify removing from the wild or otherwise changing the status of the wildlife sought to be covered by the permit;

(2) The probable direct and indirect effect which issuing the permit would have on the wild populations of the wildlife sought to be covered by the permit;

(3) Whether the permit, if issued, would in any way, directly or indirectly, conflict with any known program intended to enhance the survival probabilities of the population from which the wildlife sought to be covered by the permit was or would be removed;

(4) Whether the purpose for which the permit is required would be likely to reduce the threat of extinction facing the species of wildlife sought to be covered by the permit;

(5) The opinions or views of scientists or other persons or organizations having expertise concerning the wildlife or other matters germane to the application; and

(6) Whether the expertise, facilities or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application.

(c) *Permit conditions.* In addition to the general conditions set forth in Part 13 of this subchapter, every permit issued under this section shall be subject to the following special conditions:

(1) In addition to any reporting requirements contained in the permit itself, the permittee shall also submit to the Director a written report of his activities pursuant to the permit. Such report must be postmarked or actually delivered no later than 10 days after completion of the activity.

(2) The death or escape of all living wildlife covered by the permit shall be immediately reported to the Service's Division of Law Enforcement, P.O. Box 19183, Washington, D.C. 20036.

(3) The carcass of any dead wildlife covered by the permit shall be stored

in a manner which will preserve its use as a scientific specimen.

(d) *Duration of permits.* The duration of permits issued under this section shall be designated on the face of the permit.

§ 17.23 Economic hardship permits.

Upon receipt of a complete application, the Director, in order to prevent undue economic hardship, may issue, in accordance with the issuance criteria of this section, a permit authorizing any activity otherwise prohibited by § 17.21 above.

(a) *Application requirements.* Applications for permits under this section must be submitted to the Director by the person allegedly suffering undue economic hardship because his desired activity is prohibited by § 17.21. Each application must contain the general information and certification required by § 13.12(a) of this subchapter and all of the information required in § 17.22 plus the following additional information:

(1) The possible legal, economic or subsistence alternatives to the activity sought to be authorized by the permit;

(2) A full statement, accompanied by copies of all relevant contracts and correspondence, showing the applicant's involvement with the wildlife sought to be covered by the permit (as well as his involvement with similar wildlife), including, where applicable, that portion of applicant's income derived from the taking of such wildlife, or the subsistence use of such wildlife, during the calendar year immediately preceding either the notice in the FEDERAL REGISTER of review of the status of the species or of the proposal to list such wildlife as endangered, whichever is earliest;

(3) Where applicable, proof of a contract or other binding legal obligation which:

(i) Deals specifically with the wildlife sought to be covered by the permit;

(ii) Became binding prior to the date when the notice of a review of the status of the species or the notice of proposed rulemaking proposing to list such wildlife as endangered was published in the FEDERAL REGISTER, whichever is earlier; and

(iii) Will cause monetary loss of a given dollar amount if the permit sought under this section is not granted.

(b) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (a) of this section, the Director will decide whether or not a permit should be issued under any of the three categories of economic hardship, as defined in section 10(b)(2) of the Act. In making his decisions, the Director shall consider, in addition to the general criteria in § 13.21(b) of this subchapter, the following factors:

(1) Whether the purpose for which the permit is being requested is adequate to justify removing from the wild or otherwise changing the status of the wildlife sought to be covered by the permit;

(2) The probable direct and indirect effect which issuing the permit would have on the wild populations of the wildlife sought to be covered by the permit;

(3) The economic, legal, subsistence, or other alternatives or relief available to the applicant;

(4) The amount of evidence that the applicant was in fact party to a contract or other binding legal obligation which:

(i) Deals specifically with the wildlife sought to be covered by the permits; and

(ii) Became binding prior to the date when the notice of proposed rulemaking proposing to list such wildlife as endangered was published in the FEDERAL REGISTER.

(5) The severity of economic hardship which the contract or other binding legal obligation referred to in paragraph (b) (4) of this section would cause if the permit were denied; and

(6) Where applicable, the portion of the applicant's income which would be lost if the permit were denied, and its relationship to the balance of his income; and

(7) Where applicable, the nature and extent of subsistence taking generally by the applicant;

(8) The likelihood that the applicant can reasonably carry out his desired activity within 1 year from the date when the notice either to review the status of such wildlife or to list such wildlife as endangered sought to be covered by the permit was published in the FEDERAL REGISTER, whichever was earlier.

(c) *Permit conditions.* In addition to the general conditions set forth in Part 13 of this subchapter, every permit issued under this section shall be subject to the following special conditions:

(1) In addition to any reporting requirements contained in the permit itself, the permittee shall also submit to the Director a written report of his activities pursuant to the permit. Such report must be postmarked or actually delivered no later than 10 days after completion of the activity.

(2) The death or escape of all living wildlife covered by the permit shall be immediately reported to the Service's Division of Law Enforcement, P.O. Box 19183, Washington, D.C. 20036.

(3) The carcass of any dead wildlife covered by the permit shall be stored in a manner which will preserve its use as a scientific specimen.

(d) *Duration of permits.* The duration of permits issued under this section shall be designated on the face of the permit, but no permit issued under this section shall ever be valid for more than 1 year from the date when the notice either to review the status of such wildlife or to list as endangered the wildlife covered by such permit was published in the FEDERAL REGISTER, whichever is earlier.

Subpart D—Threatened Wildlife

11. Amend Subpart D by deleting the present sections 17.31 and 17.32, and replacing them with the following new sections:

§ 17.31 Prohibitions.

Except as provided in Subpart A of this part, or as otherwise provided in

this subpart by permit or by special rule, all of the prohibitions in § 17.21 shall apply to threatened wildlife.

§ 17.32 Permits.

The Director may issue permits for any activity otherwise prohibited with regard to threatened wildlife. Such permits shall be governed by the provisions of this section unless a special rule applicable to the wildlife, appearing in §§ 17.33 to 17.41, below, provides otherwise. Permits issued under this section must be for one of the following purposes: Scientific purposes, or the enhancement of propagation or survival; or Economic hardship; or Zoological exhibition; or Educational purposes; or Management by State conservation agencies; or Special purposes consistent with the purposes of the Act.

(a) *Application requirements.* Application for permits under this section shall be submitted by the intended recipient of the wildlife to the Director. Each such application must contain the general information and certification required by § 13.12(a) of this subchapter and the information required in § 17.22.

(b) *Issuance criteria.* Upon receipt of an application completed in accordance with paragraph (a) of this section, the Director will decide whether a permit should be issued. In making his decision, he must consider the following factors:

(1) Whether the proposed use of the wildlife would probably result, directly or indirectly, in the death, injury or reduction of the reproduction ability of the wildlife;

(2) In the case of captive, self-sustaining populations, whether the ability of the captive population in question to sustain itself will be substantially impaired by the proposed activities;

(3) Whether the expertise, facilities or other resources available to the applicant appear adequate to accomplish the objectives stated in the application;

(4) Whether the applicant has a recordkeeping system adequate to insure that wildlife obtained under the permit can be distinguished from wildlife obtained from the wild or otherwise;

(5) Whether the purpose for which the permit is sought would establish, complement or otherwise enhance the status of the species in captivity; and

(6) Such other factors as he deems relevant.

(c) *Permit conditions.* In addition to the general conditions set forth in Part 13 of this subchapter, every permit issued under this section shall, unless otherwise authorized on the face of the permit, be subject to the condition that the permittee may not transfer any wildlife held under the permit except to another holder of a permit issued under this section.

(d) *Duration of permits.* The tenure of permits issued under this section shall be designated on the face of the permit, but in no case shall extend for more than 2 years from the date of issuance. Such permits are renewable.

§ 17.33 Special rules—mammals. [Reserved]

§ 17.34 Special rules—birds. [Reserved]

§ 17.35 Special rules—reptiles.

(a) *American alligator (Alligator mississippiensis).* (1) Any threatened American alligator may be taken without a permit by an officer, employee, or Agent of the State for the following purposes:

(i) To translocate, or where necessary to destroy, specimens which constitute a danger to human life, or which constitute an imminent threat to property; or

(ii) To carry out research or conservation activities.

(2) The parts of American alligators taken pursuant to paragraph (a) (1) of this section, or which are obtained by the State in the course of law enforcement activities, may be sold, offered for sale, delivered, received, carried, transported or shipped in interstate commerce in the course of a commercial activity, provided these activities are done in accordance with § 17.54.

§ 17.36 Special rules—amphibians. [Reserved]

§ 17.37 Special rules—fishes. [Reserved]

§ 17.38 Special rules—mollusks. [Reserved]

§ 17.39 Special rules—crustaceans. [Reserved]

§ 17.40 Special rules—insects. [Reserved]

§ 17.41 Special rules—other forms. [Reserved]

Subpart E—Similarity of Appearance

12. Add a new Subpart E entitled "Similarity of Appearance," and reading as follows:

§ 17.50 General.

(a) Whenever a species is determined, pursuant to § 17.7, to be similar in appearance to endangered or threatened wildlife, the "current status" column of § 17.13(h) will show the notation "S/A." The notation will be followed by either an "E" or a "T" in parentheses to designate the treatment of the species, as either endangered ("E") or threatened ("T").

(b) The extent to which treatment as endangered or threatened is applied is determined by the reference in the "special rules" column of § 17.13(h), and the following sections of this subpart.

§ 17.51 Treatment as endangered or threatened.

(a) Whenever the "special rules" column of § 17.13(h) is marked "N/A" (not applicable), the similar species is treated in accordance with the parenthetical notation in the "current status" column as fully as if it was endangered or threatened.

(b) Whenever the "special rules" column of § 17.13(h) carries a reference to a special rule in Subpart D (Threatened Wildlife), the similar species is treated as

threatened to the extent provided in the special rule.

§ 17.52 Permits.

Whenever a species is designated "S/A" in § 17.13(h) and the reference in the "special rules" column of § 17.13(h) is to this section, the Director upon receipt of a complete application may issue permits in accordance with the issuance criteria of this section which relieves the holder of any restriction or prohibition in this Part.

(a) *Application requirements.* Applications for permits under this section must be submitted to the Director by the person who wishes to engage in the activity with the similar species. Each application must contain the general information and certification required by § 13.12(a) of this subchapter, plus all of the following information: Documentary evidence, sworn affidavits, or other information to show species identification and the origin of the wildlife (or if born in captivity, the place where born) of the wildlife in question. This information may be in the form of hunting licenses, hide seals, official stamps, export documents, expert opinion, bills of sale, or other appropriate information.

(b) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (a) of this section, the Director will decide whether or not a permit should be issued. In making his decision, the Director shall consider, in addition to the general criteria, in § 13.21 (b) of this subchapter, the following factors:

- (1) Whether the information submitted by the applicant appears reliable;
- (2) Whether the information submitted by the applicant adequately identifies the wildlife in question so as to distinguish it from any endangered or threatened wildlife.

(c) *Permit conditions.* In addition to the general conditions set forth in Part 13 of this subchapter, every permit issued under this section shall be subject to the following special conditions:

- (1) If indicated in the permit, a special mark, to be specified in the permit, must be applied to the wildlife, and remain for the time designated in the permit;
- (2) A copy of the permit must accompany the wildlife at all times.

§ 17.53 Special rules—general.

Whenever the reference in the "special rules" column of § 17.13(h) is to one of the following sections, those sections will apply exclusively, in place of any other provision of this part. Those sections will provide specific methods of distinguishing the similar wildlife from endangered or threatened wildlife.

§ 17.54 American alligator (*Alligator mississippiensis*).

(a) The American alligator in Cameron, Vermilion and Calcasieu parishes in Louisiana shall be treated as threatened, and shall be subject to all the rules of

Subpart D (Threatened Wildlife) including the special rule in § 17.35(a), except as provided in paragraph (b) of this section.

(b) American alligators excluding the manufactured products (other than tanned hides) taken in Cameron, Vermilion, and Calcasieu parishes in Louisiana in accordance with the laws and regulations of Louisiana, may be transported, shipped, carried, delivered, or received in interstate commerce in the course of a commercial activity, and may be sold or offered for sale in interstate commerce, by buyers, tanners or fabricators holding a license issued pursuant to this section.

(c) For the purposes of this section, the term:

- (1) "Buyer" shall mean a person engaged in the business of buying and selling parts or products of American alligators in the wholesale market. A buyer may also be a tanner and a fabricator;
- (2) "Tanner" shall mean a person engaged in the business of processing green, untanned hides of American alligators into leather. A tanner may also be a buyer and a fabricator;
- (3) "Fabricator" shall mean a person engaged in the business of manufacturing products from American alligator leather or other parts of American alligators. A fabricator may also be a buyer and a tanner.

(d) The Director may, in accordance with the requirements, issuance criteria, and conditions of this paragraph issue licenses for the categories described in paragraph (c) of this section.

(1) *Application requirements.* Applications for licenses under this subparagraph must be submitted to the Director by the person who wishes to engage in the activities described in paragraph (c) of this section, in accordance with Part 13 of this subchapter. In addition to the general information and certification required in § 13.12(a) of this subchapter, the following information must be supplied:

- (i) The category (buyer, tanner, or fabricator) for which the license is desired;
- (ii) A description of the applicant's business organization, including; a description of the physical plant; the method of operation of the business; experience, if any, over the previous five years; all shareholders, partners, directors, officers or other parties in interest in the business organization;
- (iii) A description, including samples, of the applicant's present or proposed system of inventory control and bookkeeping capable of insuring accurate accounting for all American alligator hides and tags dealt with;
- (iv) A statement detailing any convictions or civil penalties under State or Federal laws for taking or trafficking in wildlife within the previous five years;

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (d) (1) of this section,

the Director will decide whether a license for one of the three categories in paragraph (c) of this section should be issued. In making his decision, the Director shall consider, in addition to the general criteria in § 13.21(b) of this subchapter, the applicant's apparent ability to maintain accurate inventory and bookkeeping records of all American alligator hides and State tags dealt with.

(3) *Special conditions.* In addition to the general conditions set forth in Part 13 of the subchapter, licenses issued under this provision shall be subject to the following special conditions:

(i) Licensees may not buy, tan or fabricate any American alligator hide except one which was taken and tagged in accordance with the laws and regulations of Louisiana, or obtained by the State in accordance with § 17.26(a).

(ii) A buyer must leave all State tags on the hides, unless he ships the hides outside the State of Louisiana, in which case he must remove and return to the State the stub of the verification tag, and the shipping tag;

(iii) A tanner must leave all State hunter and verification tags on the hides, but must collect, record, and return to the issuing agency all State shipping tags attached thereto, handled in any way;

(iv) A fabricator must remove, record, and return to the issuing agency, all State hunter and verification tags;

(v) Every licensee must maintain complete and accurate records of all American alligator hides including all State tags, and the stub of the verification tag; capacity.

(vi) Fabricators shall in addition maintain complete and accurate records showing the relationships of American alligator hides processed to finished American alligator products;

(vii) Fabricators must affix, under the supervision of the Service, a mark provided by the Service to each product made of American alligator hides.

(e) Parts or products of American alligators which have been marked by a licensed fabricator in accordance with paragraph (d) (3) of this section may be transported, shipped, delivered, carried or received in interstate commerce in the course of a commercial activity, and may be sold or offered for sale in interstate or foreign commerce.

(f) Any person possessing the hides of American alligators lawfully obtained prior to December 28, 1973, may be sold, shipped, delivered, transported and carried in interstate commerce to a buyer, tanner or fabricator licensed under paragraph (d) of this section provided that a State official certifies to the Director that all such hides were lawfully obtained, and can identify all such hides.

(g) No person shall, except as authorized pursuant to this section, duplicate or apply any mark used to identify products of American alligator hides produced by a fabricator licensed under this section.

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